



CHANGES IN MARRIAGE LAW BRING GREATER EQUALITY

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FOCUS

WOMEN
AND THE
LAW

Married women in Namibia are no longer to be regarded as minors in the eyes of the law. After much deliberation, the Women and Law Reform Committee has proposed amendments to the Marriage Act. The amendments will mean that the concept of men holding marital power no longer exists.

In terms of the existing concept, a man is regarded as the natural head of the family, he is the boss over his wife and children and has control over the possessions and person of his wife. With marriage in community of property, the husband has the sole mandate to administer the couple's property. He does not need his wife's permission to buy or sell property. However, all these restrictions on the humanity of a woman will disappear when parliament, as is expected, accepts the amendments of the Women and Law Reform Committee. Ms. Nashilongo Shivute of the Department of Women's Affairs said they hope to submit the amendments to

parliament before the end of this year. She said that since independence, women's groups have demanded changes to the common marriage law. Women have often pointed to the Marriage Act as one of the most discriminatory on the Statute books.

If the amended Act comes into force, it will be applicable to all marriages, including marriages that came into force long before the new Act. The man will lose his marital power, and both man and woman will be equal in terms of the law.

The implications of the changes are, for example, that there will be communal ownership of property and properties. A man will no longer be able to buy or sell property without the knowledge of his wife. Just as a woman who was married in community of property was not able to close contracts without the signature of her husband, the husband will no longer be allowed to sign contracts without the co-signature of his wife.

Although the amendments are not

without loopholes, they bring significant improvements to the position of married women. An example of such a loophole relates to women who are the breadwinners of their families. They will still need the signature of their husband, even if he is unemployed, for certain contracts such as buying and selling property.

Another loophole affects illiterate women. A man could previously get rid of family property without the consent of his wife. But now he needs her signature. However, if the woman cannot read, her husband can cheat her and she can give her permission without knowing the contents of the contract. However, a clause has been inserted, stipulating that a wife can take the husband to court if he cheated her.

The Amendments also stipulate that both the man and woman will from now on have equal access to children. This means that both share responsibility for their children and decisions affecting the children should always be taken in their best interest. ▲

In South Africa women can use the Bill of Rights to challenge discrimination. Cathi Albertyn looks at how. Zolile and Nthabiseng were married by a magistrate 38 years ago. For 30 years they lived in a house rented from Soweto Council. The house is in Zolile's name, although they both contributed to the payment.

When Zolile died Nthabiseng had to see to matters. She went to the Department of Home Affairs to register his death. Because Zolile had not made a will, Nthabiseng was told to take her eldest son to the magistrate so that her husband's estate (belongings), including the house, could be transferred to the son. This is what faces many African women who marry in civil law. After their husbands die they are told that customary inheritance applies to them. This means the eldest son inherits the property and the widow has no rights. One of the worst things which happens is that many women lose their homes to their sons. The new Bill of Rights says all people are equal no matter their race, sex, gender, religion, language, belief or disability. It also says no person should suffer discrimination because of his or her race, sex or gender. It can be said that the Black

Administration Act (which upholds customary law on inheritance) violates women's human rights of equality and freedom from discrimination. Foremost, the law violates women's rights to equality because it puts women in a disadvantageous position, by not accepting women's rights to inherit from their husbands. The law often has a terrible result - like women being forced to give up their homes. Secondly, the law discriminates against women because it treats them unfairly. In this case it discriminates on the basis of sex and race. It puts African women in a worse position than men. White, Indian and 'coloured' women who may marry out of community of property are entitled to inherit at least R125000 of their husband's property when he dies without leaving a will. This law is called the Law of Intestate Succession, intestate means when you die without leaving a will.

What practical steps can Nthabiseng take to challenge these violations of her human rights? First, she can ask the Minister of Justice to allow the Law of Intestate to apply to her. Or she can get her sons to sign a sworn statement saying they do not want the house. The magistrate can then

transfer the property to her.

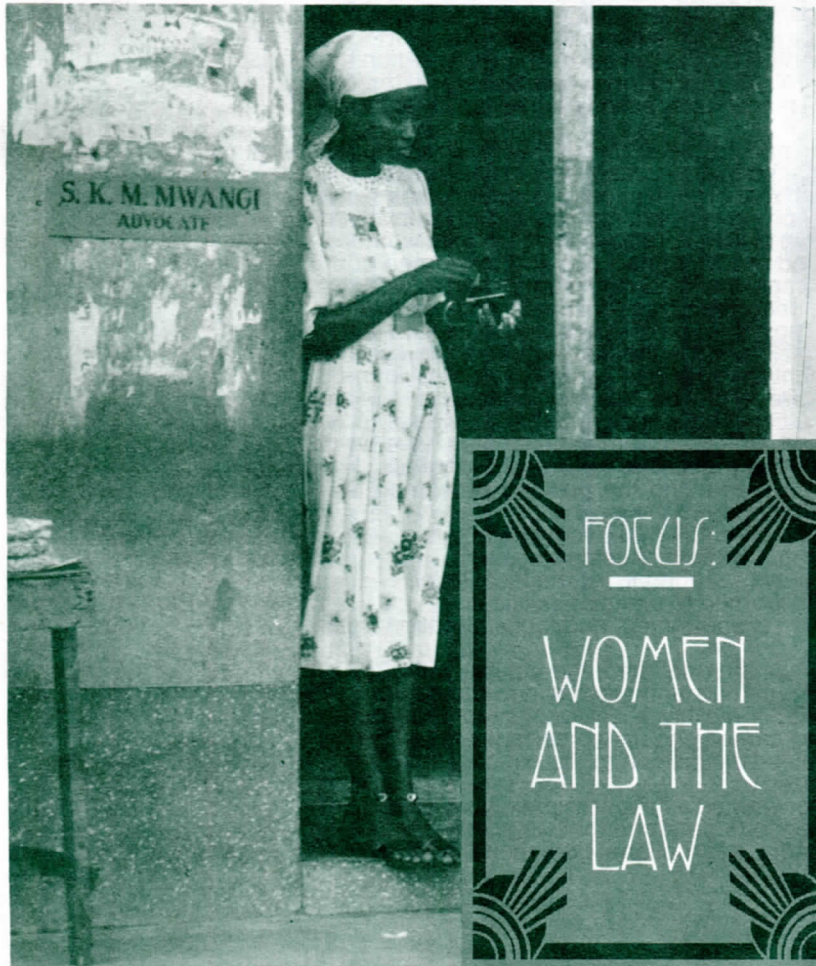
The problem with these solutions is they do not challenge the law. They depend on the goodness and kindness of the minister or Nthabiseng's sons if they decide not to help, she is still left without the house.

Nthabiseng can get together with other women in the same position and organise with women's organisations to lobby the government to change the law. This can work well and is a cheaper than using the courts.

Nthabiseng may also try legal ways of changing the law by taking her case to the Constitutional Court. She can ask the court to strike the law down as being a violation of her human rights. If the law is struck down, the Law of Intestate Succession will apply to her. Once the Human Rights Commission is established, Nthabiseng would also be able to lay a complaint with the commission.

It is up to us to challenge violations of our human rights and insist that the government acts to end them. s.

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WHY LOSE YOUR HOUSE BECAUSE YOU'RE A WOMAN?

Source: SPEAK NO. 67: December 94/ January 95.

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